

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte REINHARD KLEMM

Appeal No. 2005-0692
Application No. 09/164,509

ON BRIEF

MAILED

MAY 27 2005

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Before THOMAS, SAADAT and MACDONALD, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellant has appealed to the Board from the examiner's final rejection of claims 1 through 29.

Representative claim 1 is reproduced below:

1. A method of prefetching one or more Internet resources references in one or more Web pages, said method comprising the steps of:

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obtaining one or more estimated round trip times for said Internet resources, wherein said one or more estimated round trip times are based on an interval of time between a sending of an HTTP request and a receipt of a response to said HTTP request; and

prefetching said Internet resources based on a descending order of said one or more estimated round trip times.

The following references are relied on by the examiner:

Kunkel et al. (Kunkel)	5,961,603	Oct. 5, 1999
		(filing date: Sep. 22, 1997)
Horvitz	6,067,565	May 23, 2000
		(filing date: Jan. 15, 1998)
Bryant et al. (Bryant)	6,078,956	Jun. 20, 2000
		(filing date: Sep. 8, 1997)
Vaid et al. (Vaid)	6,119,235	Sep. 12, 2000
		(filing date: Dec. 24, 1997)
Narayanaswami	6,182,113	Jan. 30, 2001
		(filing date: Sep. 16, 1997)

All claims on appeal stand rejected under 35 U.S.C. § 103.

As evidence of obviousness as to claims 1 through 26, the examiner initially relies upon Horvitz in view of Bryant. In the second stated rejection of claims 1 through 29, the examiner relies upon Kunkel in view of Narayanaswami, further in view of Bryant. Lastly, claims 1 through 29 also stand rejected under 35 U.S.C. § 103. For this rejection the examiner relies upon Kunkel in view of Vaid, further in view of Bryant.

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Rather than repeat the positions of the appellant and the examiner, reference is made to the brief and reply brief for appellant's positions, and to the answer for the examiner's positions.

OPINION

We reverse each of the three separately stated rejections of the claims on appeal.

At the outset, we note that each independent claim, 1, 17, 25, 27, 28 and 29 in some manner recites the feature of prefetching internet resources based on a descending order of estimated round trip times, which are in turn based upon an interval of time between a sending of an HTTP request and the receipt of a response to this HTTP request.

Since Bryant is relied upon by the examiner in each of the three separately stated rejections, we observe first that this reference contains no teaching of prefetching of internet resources even though it is plain from the identified teachings such as figure 3 in conjunction with column 5, line 7 through 26 as relied upon by the examiner, that this reference teaches that it is known in the art to determine the estimated round trip times of an HTTP request and its response. This calculated response time is stored and available "for subsequent analysis

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and use" as set forth at column 5, lines 25 and 26, yet no analysis or use is taught in the reference.

In combination with Horvitz in the first stated rejection, even if we consider within 35 U.S.C. § 103 that Horvitz and Bryant are properly combinable within this statutory provision, we must reverse the rejection of independent claims 1, 17 and 25 under 35 U.S.C. § 103. The showings in figure 1, 5 and 6 set forth the structural environment of the client terminal in Horvitz, while flow chart figures 8, 10A, 11A, 13A and 17A,B relate to the operability of the prefetching of internet resources that the client desires to retrieve from various servers. The teachings at column 23, lines 19 through 22 and column 24, lines 16 through 20 relate to time dependencies in the ascertainment of time in the context of a response time to a transmitted command to a website. Even though these locations relate to teachings of time in the determination of response time to a transmitted command or a website, there is no specific teaching here that the prefetching occurs on a descending time-based order as required by each claim on appeal.

Each of the respective other figures that we noted earlier relate to the teaching of the use of the term "descending" as it would appear to relate to the subject matter of the claimed

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invention. Taking figure 8 as representative, a predefined results fetch process 800 is shown including assigning the likelihood of probability that each URL may meet specific criteria set forth associated with the individual user of the client's terminal, where the step 830 sorts these URLs in a descending order of the likelihood of probability of them having information pertinent to the user's desires. Corresponding teachings are shown in figure 10A in step 1060, in figure 11A in step 1160, in figure 13A in step 1360 and in figures 17A,B in steps 1725 and 1740.

Within Horvitz and in considering this reference in conjunction with Bryant, there is, as generally asserted by appellant in the brief and reply brief, no teaching to the artisan of arriving at the claimed feature of prefetching internet resources based on a descending order of round trip times. As noted earlier, the descending order teaching identified by us in Horvitz does not relate to descending order of round trip times but to descending order of likelihood of probabilities, which in the context of Horvitz do not appear to relate to the round trip times associated with a sending of internet request and the receipt of a response. Therefore, the decision of the examiner rejecting

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claims 1 through 26 under 35 U.S.C. § 103 is reversed since we cannot sustain the rejection of each of the respective independent claims 1, 17 and 25 on appeal.

The examiner relies upon Kunkel in each of the respectively stated second and third rejections of the claims on appeal. We do not agree with the examiner's assertions at pages 7 and 8 of the answer as to Kunkel for the examiner asserts that prefetching internet resources dependent on round tree trip times based on send and receive times in a descending order are taught in the respectively identified locations identified by the examiner here. It appears that the examiner has stretched the identified teachings and suggestions to the arrive at some distorted measure of the requirements of representative claim 1 on appeal.

Since Bryant does not teach or suggest the prefetching based upon a descending order of round trip times as we indicated earlier, we look to the respective teachings of Narayanaswami and Vaid. These two references are not asserted by the examiner to teach these features. Our review of them leads us to conclude that Narayanaswami is merely cumulative to other teachings in

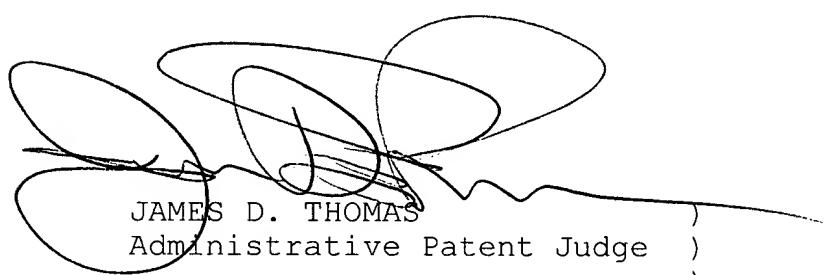
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Kunkel and Bryant and that Vaid merely buttresses as well the teachings of Bryant relating to the determination of round trip times. Thus, when the respective combination of references are considered together within 35 U.S.C. § 103 as properly combinable within this statutory provision, the second and third stated rejections of claims 1 through 29 must be reversed.

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In view of the foregoing, the decision of the examiner
rejecting claims 1 through 29 under 35 U.S.C. § 103 is reversed.

REVERSED



JAMES D. THOMAS)
Administrative Patent Judge)
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MAHSHID D. SAADAT)
Administrative Patent Judge)
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ALLEN R. MACDONALD)
Administrative Patent Judge)
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